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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/762,985	01/21/2004	G. Paul Koning	EQLC-P01-006	5999
28120 7590 02/20/2007 FISH & NEAVE IP GROUP ROPES & GRAY LLP ONE INTERNATIONAL PLACE BOSTON, MA 02110-2624			EXAMINER NANO, SARGON N	
			ART UNIT 2157	PAPER NUMBER
SHORTENED STATUTORY PERIOD OF RESPONSE		MAIL DATE		DELIVERY MODE
3 MONTHS		02/20/2007		PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

**Office Action Summary**

Application No.

10/762,985

Applicant(s)

KONING ET AL.

Examiner

Sargon N. Nano

Art Unit

2157

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 21 January 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1 - 13 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1 - 13 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date See Continuation Sheet.

- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

### **DETAILED ACTION**

1. This action is responsive to application filed on Jan. 21, 2003. Claims 1 – 13 are pending examination.

#### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 1 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The preamble does not fit with the language of the body of the claim because there is no management of requests in the body of the claim.

Claim 3 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The claim recites "moving clients", it is not clear if it is meant the moving request or moving process.

Claim 4 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The claim recites "is measured system load". This limitation is not clear.

#### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 1 – 13 are rejected under 35 U.S.C. 102(e) as being anticipated by Wu et al. U. S. Patent No. 7,085,829 (referred to hereafter as Wu).

Wu teaches a method and system for an intelligent proxy server for workload shifting using voice over the internet protocol system (see abstract).

As to claim 1, Wu teaches a system for managing requests from a plurality of clients for access to a set of resources, comprising:

a plurality of servers having the set of resources partitioned thereon, each server having a load monitor process capable of communicating with other load monitor processes for generating a measure of system load (see col. 3 line 48 – col. 5, line 7, Wu discloses a plurality of servers that have plurality of services. statistics are collected from these servers to determine the workload of these servers), and

a client load on each of the plurality of servers (see col.2, lines 62 – col. 3 line 7, Wu discloses determining the workload of each server in the plurality of servers).

As to claim 2, Wu teaches a system according to claim 1, further comprising:

a client distribution process, responsive to the system load, and capable of repartitioning the set of client connections for distributing client load (see col. 4 lines 45 – 65).

As to claim 3, Wu teaches a system according to claim 1, further comprising a load distribution process for determining resource loads when moving clients among servers (see col.6 lines 35 – 53).

As to claim 4, Wu teaches a system according to claim 1, further comprising: a client allocation process for causing a client to communicate with a selected one of said plurality of servers (see col. 4 lines 45 – 60).

As to claim 5, Wu teaches a system according to claim 1, further comprising: a client allocation process for distributing incoming client requests across said plurality of servers (see col. 4 lines 45 – 60).

As to claim 6, Wu teaches a system according to claim 2, wherein the client distribution process includes a round robin distribution process (see col. 2 lines 4 – 29).

As to claim 7, Wu teaches a system according to claim 2, wherein the client distribution process includes a client redirection process (see col. 2 lines 4 – 29).

As to claim 8, Wu teaches a system according to claim 2, wherein the client distribution process includes a disconnect process for dynamically disconnecting a client from a first server and reconnecting to a second server (see col. 6 lines 35 – 53).

As to claim 9, Wu teaches a system according to claim 1, further comprising: an application program executing on at least one of the servers and being capable of transferring a client connection to a different server (see col. 6 lines 35 – 53).

As to claim 10, Wu teaches a system according to claim 1, further comprising: an adaptive client distribution process for distributing clients across the plurality of servers as a function of dynamic variations in measured system load (see col. 9 lines 25 – 43).

As to claim 11, Wu teaches a system according to claim 1, further comprising: a storage device for providing storage resources to the plurality of clients (see col. 9 lines 25 – 43).

As to claim 12, Wu teaches a system according to claim 1, further comprising: a storage service process for providing at least one volume of storage partitioned across the plurality of servers (see col. 11 lines 14 – 33).

As to claim 13, Wu teaches a storage area network, comprising: a plurality of servers each configured as a server of claim 1 (see rejection of claim 1 and fig.1).

**NOTE : The IDS that is dated march 16, 2006 was not signed by applicant's representative.**

### ***Conclusion***

3. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

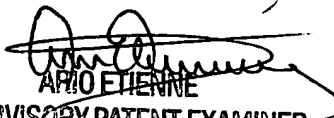
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sargon N. Nano whose telephone number is (571) 272-4007. The examiner can normally be reached on 8 hour.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ario Etienne can be reached on (571) 272-4001. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Sargon Nano  
Feb. 1, 2007

  
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